STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY HOLDINGS COMPANY, MIDAMERICAN ENERGY COMPANY, TETON FORMATION L.L.C., and TETON ACQUISITION CORPORATION	DOCKET NO. SPU-99-32

ORDER TERMINATING DOCKET

(Issued March 10, 2000)

PROCEDURAL HISTORY

On November 12, 1999, MidAmerican Energy Holdings Company, MidAmerican Energy Company, Teton Formation L.L.C., and Teton Acquisition Corporation, hereinafter collectively referred to as Applicants, filed with the Utilities Board (Board) a proposal for reorganization pursuant to Iowa Code §§ 476.76 and 476.77 (1999). Applicants propose a reorganization in which three to six investors will own all the equity shares of MidAmerican Energy Company's (MidAmerican Energy) indirect parent, MidAmerican Energy Holdings Company (MidAmerican Holdings).

The three identified investors are Berkshire Hathaway Inc., David Sokol, and Walter Scott, Jr. If the reorganization is approved, these three investors will purchase all the common stock of MidAmerican Energy Holdings Company and assume all of its debt. The two Teton companies listed as Applicants were formed merely for purposes of facilitating the reorganization. If up to three additional shareholders are added, they will come from Applicants' senior management. Currently, MidAmerican Energy Holdings Company has approximately 1,000 shareholders.

This is not a traditional reorganization involving the merger of utilities or utility holding companies. The reorganization consists of reducing the number, and changing the identity, of the shareholders of MidAmerican Energy's indirect parent, MidAmerican Holdings, and changing the composition of MidAmerican Holding's board of directors. The reorganization does not involve any significant changes, such as changes in management or staffing, to MidAmerican Holdings or MidAmerican Energy. In fact, organizational charts will be the same after the reorganization as before the reorganization.

On December 16, 1999, the Board issued an order establishing a procedural schedule and, pursuant to Iowa Code § 476.77(2), extended the deadline for Board action through May 10, 2000. In addition to the Consumer Advocate Division of the Department of Justice (Consumer Advocate), Keith Meyer was granted intervenor status. Applicants and Consumer Advocate submitted prefiled testimony. A hearing on the proposed reorganization was held on February 16, 2000. Both Consumer Advocate and Keith Meyer participated in the hearing and cross-examined witnesses. Consumer Advocate and Applicants each submitted initial and reply post-hearing briefs.

STATUTORY FACTORS

Iowa Code § 476.77(3) lists the following factors that the Board may consider in its review of a proposal for reorganization:

> a. Whether the board will have reasonable access to books, records, documents, and other information relating to the public utility or any of its affiliates.
>
> b. Whether the public utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is impaired.
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> c. Whether the ability of the public utility to provide safe, reasonable, and adequate service is impaired.
>
> d. Whether ratepayers are detrimentally affected.
>
> e. Whether the public interest is detrimentally affected.

The standards for review in section 476.77 indicate the important questions are the impacts of the reorganization on the utility's ability to attract capital, the utility's ratepayers, and the public interest generally.

This is the second reorganization in the past year involving MidAmerican Energy and MidAmerican Holdings. Last year, CalEnergy Company, Inc., completed a merger with MidAmerican Holdings and MidAmerican Energy, the first time an independent power producer had merged with a traditional utility. In the various orders issued by the Board in Docket No. SPU-98-8, commitments made by CalEnergy and the MidAmerican companies were discussed. These commitments related to, among other things, affiliate relationships, maintenance of an investment grade rating and adequate capital structure for MidAmerican Energy, affiliate debt, non-recourse financing, and cash infusions by MidAmerican Holdings. It is most significant that Applicants' witness Sokol, a member of the new investor group, reaffirmed that the commitments made in Docket No. SPU-98-8 remain fully in effect and are not in any way impacted by the current reorganization proposal. (Tr. 25). These commitments were the basis for the Board's determination that the merger should be allowed to go forward by operation of law.

The Board will discuss each of the five statutory factors. Ratepayer impact will be discussed in a separate section following the discussion of the other four factors because this criteria relates to the acquisition adjustment issues raised by Consumer Advocate.

In reviewing this reorganization, the Board finds that it will continue to have reasonable access to books and records. MidAmerican Holdings headquarters will remain in Des Moines, and records will be available to the Board upon request as they have been in the past and as required by law. (Tr. 105). Access to affiliate documents will be unchanged. (Tr. 105-06). To the extent information is not maintained in Des Moines, it will be made available in Des Moines within a reasonable time after the Board requests access to it. (Tr. 106).

MidAmerican Energy's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, will not be impaired. The financial commitments made in the CalEnergy merger provide protections relating to the investment-grade rating and capital structure of MidAmerican Energy, affiliate debt, non-recourse financing, and cash infusion by MidAmerican Holdings. (Tr. 25). This reorganization does not change the many variables that impact MidAmerican Energy's financial integrity and capitalization. (Tr. 101).

In fact, this reorganization increases the stockholder equity of MidAmerican Holdings, reducing the financial risk of the consolidated company. (Ex. PJG-7). While Berkshire Hathaway has indicated it will provide additional funds to MidAmerican Energy, if needed, Berkshire's controlling shareholder, Warren Buffet, will not direct capital within MidAmerican Energy. (Tr. 49-50). No change is anticipated in the no cash dividend policy of MidAmerican Holdings. (Tr. 53). Rating agencies have reacted positively to the reorganization, and the reorganization will have no impact on MidAmerican Energy's earnings, cash flows, or interest expense. (Tr. 134, 136).

There was no evidence to indicate MidAmerican Energy's ability to provide safe, reasonable, and adequate service would be impaired by the reorganization. There will be no change in executive leadership, management, or other staffing of MidAmerican Energy as a result of the reorganization. There will also be no consolidation, expansion, or restructuring of the businesses of MidAmerican Energy as a result of the reorganization. (Tr. 81). Applicants have a statutory duty, pursuant to Iowa Code § 476.2(5), to maintain adequate personnel within the state for the delivery ofsaf ueate sevri.

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MidAmerican Holdings to focus on running its business in the best interest of all stakeholders. MidAmerican Holdings will remain headquartered in Des Moines, continue to employ 3,000 people in the state, and remain a leader in economic development and not-for-profit community organizations. (Tr. 82-83).

RATEPAYER IMPACT

Applicants did not attempt to justify this reorganization by significant quantifiable benefits because no changes in operations or personnel are planned as a result of the reorganization. The anticipated reorganization cost savings are projected to be only $420,000 per year. (Tr. 145). However, Applicants believe this reorganization, which reduces the number of shareholders to six or less, allows MidAmerican Holdings and its v(g)9.2(ani)rious companies, including MidAmerican Energy, to focus on long-term growth. Applicants are able to focus on long-term growth and strategies because of the philosophies of the three named inv(g)9estors. Applicants believe a focus on long-term strategy rather than quarterly corporate earnings will be in the best interests of all constituencies, including ratepayers. (Tr. 19-21, 42-43). The Board agrees that this long-term philosophy should bring continuity and focus to acquisition premium reflects the difference between monies paid for MidAmerican Holding's common equity and the book value of that common equity, plus an estimated $25 million in reorganization related transaction costs. (Tr. 145). As noted earlier, estimated cost savings from the reorganization are $424,000 per year. (Tr. 146).

Applicants' witness Goodman testified none of the expenses of the reorganization, including the acquisition premium, would be allocated to MidAmerican Energy or ratepayers. However, this testimony was qualified by the caveat that MidAmerican Energy reserved the right to propose an acquisition adjustment if a party in a future rate proceeding proposes a double leverage or similar adjustment. (Tr. 87-89, 146).

The Board in reorganization proceedings has consistently found that the propriety of an acquisition adjustment is an issue to be considered in a rate case proceeding. See *Iowa Resources Incorporated and Midwest Energy Company,* Docket No. SPU-90-5, "Order Terminating Docket," p. 5 (July 2, 1990). As recently as the CalEnergy/MidAmerican merger, the Board said:

> The Board will not decide issues relating to any future proposed acquisition adjustment or capital costs in this proceeding. These issues are best left for argument in a future rate case or other appropriate proceeding. *CalEnergy Company, Inc., et al.,* Docket No. SPU-98-8, "Order" (February 17, 1999).

The Board is not persuaded to change this long-held view. Generally, acquisition adjustments are not allowed in rates unless the utility can demonstrate that there are actual benefits associated with the purchase in relative proportion to the amount of the acquisition adjustment. In a reorganization proceeding, only projected benefits are available. In a subsequent rate proceeding, some actual benefits, rather than merely projected benefits, can be examined. The Board notes that uncertainty in this reorganization proceeding over the actual amount of the acquisition adjustment bolsters its position that the issue is one more properly determined in a rate proceeding. (Tr. 152-53). In addition, rate proceedings generally attract interest from customer intervenor groups. Such groups are not usually active in reorganization proceedings because rate issues are not being decided in these proceedings.

CHANGES TO THE PROPOSAL

The Board understands Applicants have received approval from all other state and federal agencies that have jurisdiction to review all or a portion of this reorganization, and that no material conditions or changes to Applicants' proposal have been imposed by any agency reviewing this reorganization. The Board will reach its conclusions based upon the reorganization proposal submitted to it. Any material changes in the proposed reorganization may change the basis for the conclusions the Board has reached and may require submission of a revised proposal. Therefore, if there are any material changes to the proposed reorganization, Applicants will be required to file a copy of those changes with the

Board, including an analysis of the impact of the changes. The Board will then determine whether a new proposal for reorganization must be filed.

CONCLUSION

Based upon the testimony and evidence filed pursuant to Iowa Code § 476.77 (1999) and 199 IAC chapter 32, including the reaffirmance of all commitments made in Docket No. SPU-98-8, the Board finds the Applicants have established the proposed reorganization is not contrary to the interests of ratepayers and the public interest. The Board also finds the other statutory factors are satisfied. Therefore, the reorganization proposed by Applicants will be permitted to take place by operation of law and this docket will be terminated.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Docket No. SPU-99-32 is terminated. The joint application for reorganization filed by MidAmerican Energy Holdings Company, MidAmerican Energy Company, Teton Formation L.L.C., and Teton Acquisition Corp. on November 12, 1999, is not disapproved.

2. Applicants shall promptly file with the Board any material changes to the proposed reorganization. The filing shall include an analysis of the impact of any changes.

3. Motions and objections not previously granted or sustained are denied or overruled. Any argument not specifically addressed in this order is rejected either

as not supported by the evidence or as not being of sufficient persuasiveness to warrant comment.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 10th day of March, 2000.